

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

FRANCIS HORN, an individual, No. 2:05-cv-00814-MCE-KJM P  
Plaintiff,

v. ORDER

STATE OF CALIFORNIA;  
CALIFORNIA DEPARTMENT OF  
CORRECTIONS; ASSOC. WARDEN  
K.M. CHASTAIN, individually;  
CHIEF DEPUTY WARDEN STILES,  
individually; CORRECTIONAL  
OFFICE J. GRADY, individually;  
MTA W. VAN SANDT,  
individually; RN T. MEEKS,  
individually; RN G. LAUCIRICA,  
individually; RN J. MARSTON,  
individually; FRANK CHRISTIAN,  
individually.

Defendants.

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Presently before the Court is Defendant Lauciraca's Motion to Dismiss pursuant to Federal Rule of Civil Procedure 4 (m) . Rule 4 (m) provides that unless service is effectuated on a defendant within 120 days after filing of the complaint, the Court shall dismiss the action as to that defendant or direct that service be effected within a specified time.

1 An exception to mandatory dismissal is recognized, however, if  
2 the plaintiff shows good cause for failure to comply with  
3 Rule 4(m). In that instance, an extension for service of process  
4 is authorized.

5 The instant action was initiated in Sacramento County  
6 Superior Court on April 6, 2005. The State of California timely  
7 removed the case to this Court on April 22, 2005. In a removed  
8 case, the 120-day period prescribed by Rule 4(m) commences on the  
9 date of removal (see Vasquez v. N. County Transit Dist., 292 F.3d  
10 1049, 1053 (9th Cir. 1987)), thereby necessitating service on all  
11 defendants not later than August 21, 2005. Defendant Lauciraca,  
12 however, was not served until almost a year later, on August 16,  
13 2006. The instant motion was consequently filed on September 12,  
14 2006. Because of Lauciraca's failure to request a hearing date,  
15 however, the matter was not regularly noticed for hearing until  
16 December 7, 2007.

17 Plaintiff has not opposed Defendant Lauciraca's Motion.  
18 Given that non-opposition, and Plaintiff's failure to demonstrate  
19 any good cause for waiting nearly a year to serve Defendant  
20 Lauciraca, the present Motion is hereby GRANTED.<sup>1</sup>

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27       <sup>1</sup> Because oral argument would not be of material assistance,  
28 this matter was determined to be suitable for decision without  
oral argument. L.R. 78-230(h).

Defendant Lauciraca is dismissed as a party to the present lawsuit, without prejudice.

IT IS SO ORDERED.

Dated: December 11, 2007

  
MORRISON C. ENGLAND, JR.

MORRISON C. ENGLAND, JR.  
UNITED STATES DISTRICT JUDGE